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CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations Secretariat

Addendum

INFORMATION RECEIVED FROM GOVERNMENTS (continued)

Czechoslovakia

/Original: English/
/6 December 1972/

1. (a) Criminal proceedings against an offender accused of a penal act for which the Penal Code in its Special Part prescribes death penalty are of an ordinary character and are conducted, as provided by the Code of Penal Procedure, in the same manner as against offenders who committed other criminal acts. The perpetrator of a crime punishable by death penalty thus enjoys the same rights and guarantees as those accorded under the Code of Penal Procedure to any other offender.

Under section 36, paragraph 3, of the Code of Penal Procedure, the accused in penal proceedings concerning an act punishable by death penalty must have counsel already in the preparatory proceedings regardless of his property situation. If the accused does not make use of the right to choose his counsel, a counsel is appointed for him. If the accused is sentenced to death penalty, his right to submit an appeal or a petition for pardon is not limited in any way in comparison to other convicts.

All judgements imposing the death penalty shall be reviewed by the Supreme Court of the Czechoslovak Socialist Republic from the point of view of the legality of the judgement and the proceedings which had preceded it. If it finds that the law was violated in a manner which could have affected the imposition of the death penalty, it shall proceed as if a complaint against violation of the law had been filed, i.e., in its decision it shall pronounce that the law had been violated and that the judgement imposing the death penalty, or the proceedings preceding it, are cancelled and that it orders new proceedings.

The death penalty may be executed only if the judgement has been unaffected by the review carried out by the Supreme Court of the Czechoslovak Socialist Republic and the court has been advised that there has been no petition for pardon or that such petition has been rejected.

(b) Although there is no provision in the Czechoslovak legal regulations regarding the time limit within which the death penalty could be executed, there in fact exists time difference between the date on which the judgement becomes effective and the date of the execution of the death penalty. This is given by the period of time which is necessary for the review by the Supreme Court of the Czechoslovak Socialist Republic of the judgement imposing the death penalty, as stated in paragraph (a) of this information. Since the application of the existing legal guarantees always requires a certain period of time, we do not regard as necessary and purposeful to prescribe a time limit before the expiry of which the death penalty could not be executed.

2. The death penalty is expressly defined by the law as an extraordinary penalty. Possibilities for its imposition are very limited. Its imposition is possible only in respect of crimes for which the Penal Code allows the death penalty and only in cases where the degree of danger of such crime to the society is too high, where the imposition of the penalty is required for the effective protection of the society, or if there is no hope that the offender can be educationally affected by another penalty. There are 29 criminal acts for which the death penalty can be imposed. From these, 13 are military crimes for which the imposition of the death penalty comes into consideration mainly under the condition that they were committed in a state of defence emergency or in battle. In four cases they are the crimes against humanity.

The number of crimes committed in times of peace for which the death penalty can be imposed is very small. Its imposition comes quite rarely and practically only in cases of brutal murders. The Penal Code does not prescribe for any of the crimes capital punishment as the only penalty so that the court can choose between the death penalty or a long-term imprisonment.

The death penalty may in no case be imposed on a pregnant woman or a juvenile, that is a person who was not older than 18 years when he committed the crime.

Finland

/Original: English/
/18 January 1973/
Additional reply

A declaration given in 1826 de facto abolished the execution of capital punishment in Finland. Since then, death sentences have not been executed in peace time. By an Act on the deletion of capital punishment from the penal system No. 343/72, of 5 May 1972, which came into force on 1 June 1972, the death penalty was deleted from the Finnish legislation concerning both peace and war-time and substituted by the penalty of hard labour for life.

Tunisia

/Original: French/
/27 November 1972/

Le Code de procédure pénal tunisien accorde dans les différentes phases de la procédure, des garanties aux accusés d'un crime passible de la peine capitale. C'est ainsi que lors d'une première comparution, le juge d'instruction doit, après avoir constaté l'identité de l'inculpé, lui faire connaître les faits qui lui sont imputés ainsi que les textes de loi applicables à ces faits, et recevoir ses déclarations (art. 69 du Code précité).

De même, le juge d'instruction doit donner avis à l'inculpé (garantie capitale) de son droit de choisir un conseil parmi les avocats inscrits au tableau ou admis en stage. A défaut de choix, un conseil doit lui être désigné d'office. La désignation est faite par le Président du Tribunal (art. 69).

L'inculpé peut également communiquer librement avec son Conseil dès après la première comparution (art. 70).

En outre, tout inculpé de crime ne peut être renvoyé devant le tribunal criminel que par la chambre d'accusation qui est une juridiction d'instruction de second degré. C'est en effet l'arrêt de renvoi de ladite juridiction qui fait de l'inculpé un "accusé" (art. 119). Devant la Cour criminelle, l'assistance de l'avocat est également obligatoire. Si l'accusé ne choisit pas un avocat, le Président lui en désigne un d'office (art. 141).

Si en principe, les jugements sont rendus à la majorité des voix, la condamnation à la peine capitale ou aux travaux forcés à perpétuité est, aux termes de l'article 162, prononcée par quatre voix au moins. Il est à noter que la Cour criminelle se compose de cinq magistrats, le président compris.

Le Code précité prévoit également qu'aucun individu condamné à mort ne peut être privé du droit de former un recours devant une instance judiciaire supérieure ou de demander sa grâce. En effet, d'après les articles 258 - 261 - 162 et 163, tout condamné à mort peut se pourvoir en cassation dans un délai de cinq jours à dater de la décision contradictoire. Le pourvoi est formé par simple requête. Il est jugé par ladite Cour toutes affaires cessantes.

Le condamné à mort est dispensé de la consignation de l'amende à laquelle il serait condamné si sa requête était rejetée.

Quant au droit de grâce, l'article 342 dispose que lorsque la peine prononcée est la mort, la décision dès qu'elle est devenue définitive est portée à la connaissance du Ministre de la justice qui la soumet au Président de la République pour l'exercice de son droit de grâce. La condamnation ne peut être mise en exécution que lorsque la grâce a été refusée.

Il convient également de signaler qu'en matière d'exécution, le Code pénal tunisien prévoit dans son article 9 que la femme condamnée à mort, qui est reconnue enceinte ne subit sa peine qu'après délivrance.

/...

Enfin, s'agissant de l'abolition de la peine capitale, il ne paraît pas possible, en l'état actuel de la législation tunisienne, de consacrer un tel principe. Toutefois, la Tunisie ne manquera pas d'étudier avec atttention les propositions et suggestions qui seront faites par les Nations Unies à ce sujet.

Zambia

[Original: English]
[13 December 1972]

A...

(i) A person condemned to death in Zambia is not deprived of the right to appeal to the Court of Appeal and whether a condemned person petitions for pardon or not, a death warrant is not signed by His Excellency the President unless the Advisory Committee on the Prerogative of Mercy has met, reviewed the case and made recommendations to His Excellency the President as to whether a person should be hanged or not.

(ii) A death sentence in Zambia is not carried out unless the procedures of appeal and a review by the Advisory Committee on the Prerogative of Mercy have been terminated.

The procedure is as follows:

(a) At the trial of a person for a capital offence, such person must be legally represented and is always legally represented.

(b) If the prisoner is sentenced to death by the High Court, he always appeals to the Court of Appeals, and the appeal is presented by a legal representative.

(c) If the Court of Appeal dismisses the appeal and confirms the death sentence, then automatically the Advisory Committee on the Prerogative of Mercy under section 55 (4) of the Constitution of Zambia, reviews the whole case and advises His Excellency the President whether the death warrant should be signed or not, and whether the prisoner should be granted a pardon or reprieve.

(iii) No person may be tried on a charge of murder or manslaughter without legal representation.

B. In Zambia there are adequate legal procedures and safeguards, so that fixing a time-limit before the expiry of which the death sentence should be carried out would serve no useful purpose.

It is not intended to restrict the use of the death penalty or to abolish it, and no changes have taken place in this direction since 1965.